Gill FJ.: I am also of the opinion that in view of what their Lordships of the Privy Council said in *Lopes* v. *Valliappa Chettiar*[1] this court has no option but to allow this application for leave to appeal to the Yang di-Pertuan Agong, because, for the reasons stated by the learned Lord President in his judgment which has just been read, the judgment of the High Court from which this appeal arose was clearly a final judgment in that it finally disposed of the rights between the parties under an agreement for the sale of land, the subject matter in dispute, the value of which is admittedly more than $5,000.

As to the question argued by Mr. Mooney on behalf of the respondent, on the authority of *Sun Life Assurance Co. of Canada* v. *Jervis*,[2] as regards the futility of the proposed appeal to the Yang di-Pertuan Agong, it is not for this court to make any pronouncement thereon.

Application allowed.

Solicitors: *Allen & Gledhill; Skrine & Co.*

MAHESAN v. PUBLIC PROSECUTOR

[F.C. (Ong C.J. (Malaya), Ali F.J. & Ong Hock Sim J.) February 11, 1970]

[Kuala Lumpur — Federal Court Criminal Appeal No. X. 29 of 1969]

Bribery and Corruption — Accepting gratification as reward for services rendered — Prima facie case of commission of offences shown at close of prosecution — Not rebutted by defence — Whether society of which accused was secretary is a public body — Production of police statement of accused objected to and wrongly upheld — Evidence of pecuniary resources disproportionate to accused's known source of income — No miscarriage of justice — Sentence — Prevention of Corruption Act, 1961, ss. 4 (a), 14, 15 & 16.

This was an appeal against the conviction of the appellant by Raja Azlan Shah J. on two charges of corruption under section 4 (a) of the Prevention of Corruption Act, 1961. At the appeal it was argued that the learned trial judge (1) was wrong in holding that the Malaysian Government Officers' Co-operative Housing Society Ltd. was a "public body"; (2) failed to direct himself on the need of corroboration; (3) erred in applying section 17 of the Act as regards the evidence of pecuniary resources or property disproportionate to the accused person's known sources of income in the absence of any direct evidence of gratification; (4) erred in excluding a statement made by the appellant to the police.

Held, dismissing the appeal: (1) on the facts of the case, a *prima facie* case was established at the end of the prosecution case, even without regard to the aid of the presumption under section 14 or the corroborative evidence of resources admissible under section 17 of the Act and this had not been rebutted by the defence;

(2) although the learned trial judge was wrong (a) in holding that the society was a public body and (b) in excluding the statement made by the appellant to the police, no miscarriage of justice was occasioned thereby.

[Editorial Note: As we go to press we understand that the appellant's application for leave to appeal to the Privy Council was dismissed by the Board on May 13, 1970.]

Case referred to:-

(1) *R.* v. *Oster-Ritter* (1948) 32 Cr. App. R. 191.

FEDERAL COURT.

Sir Dingle Foot, Q.C. (*M. Shankar* with him) for the appellant.

Ajaib Singh (Senior Federal Counsel) (*Hashim bin Majid*, Deputy Public Prosecutor, with him) for the respondent.

Cur. Adv. Vult.

Ong C.J.: On September 6, 1969 the appellant was convicted in the High Court at Kuala Lumpur on two charges of corruption under section 4(a) of the Prevention of Corruption Act 1961 and sentenced to a term of seven years' imprisonment, concurrent, on each charge; by way of additional penalty he was ordered to pay to the Malaysian Government Officers' Co-operative Housing Society Limited the sum of $122,000 being the total of the gratification received by him in respect of those charges. He has appealed against the conviction and sentence.

In effect the charges were that, on May 13, 1965 and June 29, 1965, he corruptly accepted gratification in cash payments of $82,000 and $40,000 respectively from one S.M. Manickam as his reward for services rendered in connection with the purchase of certain land at Sungei Dua, Penang, by the Malaysian Government Officers' Co-operative Housing Society Limited, of which he was the secretary and agent.

The essence of the prosecution case was that in June 1964, having viewed the land in the company of Manickam and the option-holder, Rengasamy, the appellant made a secret pact with Manickam for the latter to purchase the land at $8,000 per acre and resell it to the housing society at double the price.

To start with, two cardinal facts were conclusively established, that Manickam purchased the land for $456,000 on November 6, 1964 and that on January 15, 1965 he entered into an agreement with the Housing Society to resell it for $944,000, which was at the price he offered. The most surprising feature of the deal, in this country or anywhere else in the world, was that the first offer was treated as non-negotiable, although there was not the ghost of a suggestion that any counter-offer would be at the risk of another standing offer being accepted. In a word, the gravamen of the charges was simply that the appellant, knowing of the price paid by Manickam, or knowing that it would be readily ascertained, for his own profit, refrained from disclosing the information in his possession to the board as he was in duty bound to do. This was the one and only vital question of fact which was decisive, as the appellant fully appreciated, of his guilt or innocence. As he declared in his statement from the dock:-

"I emphatically deny that I ever knew Manickam had purchased this piece of land at $8,000 per acre, nor was I told in Penang when I went to see it. Had I known that Manickam had purchased this land at $8,000 I would have felt it was my duty to inform the board."

In our view, therefore, once this salient issue of fact was proved by the prosecution to the entire satisfaction of the learned trial judge, the conclusion to be drawn was inevitable. The appellant's deliberate silence showed that he had earned his reward and the

two payments was it. Everything else was and is beside the point and immaterial, unless there was reasonable grounds for holding otherwise. In this view we are fortified by the line since taken by learned counsel for the appellant in this appeal. The judgment was attacked on five grounds, namely —

1. that the judge was wrong in holding the housing society to be a "public body" within the meaning of section 2 of the Act;
2. that the judge misdirected himself in holding that there was corroboration of the evidence of the accomplice, Periasamy, the land-broker;
3. that the judge failed to direct himself as to the need of corroboration of the evidence of the witness, Rengasamy, whom he treated as an accomplice;
4. that the judge erred in applying section 17 of the Act in the absence of any direct evidence of gratification. (This section refers to evidence of pecuniary resources or property disproportionate to an accused person's known sources of income.);
5. that the judge erred in excluding a statement made by the appellant to a police officer on October 5, 1967.

It will be observed that, on the crucial issue of knowledge, which is purely a question of fact — as the logical conclusion or inference to be drawn from the primary facts established — it was never suggested that the learned trial judge's finding was against the weight of evidence or that such finding was not a legitimate inference from the primary facts. With due apologies to learned counsel if we view the case in a different light, it appears to us not without significance that all the criticisms levelled against the judgment were on questions of law, pure and simple. On the facts the only person able to answer and rebut the prosecution case was Dr. Saw Hock Chuan. He turned out worse than a broken reed. Citing chapter and verse for his reasons — not relying on impressions from demeanour alone — the judge described him as "an unscrupulous businessman, a shady and doubtful character ... prepared to go all the way to fabricate evidence ... (whose) testimony is a tissue of lies". He has not been white-washed.

At the trial the prosecution had set about their task of proving the charges in this manner. Lim Lai Hin (P.W. 6), who was owner of the land with 9 others, was called to testify that the owners had given Rengasamy an option, expiring on June 30, 1964, to sell the land, approximately 59 acres in extent, at $8,000 per acre. Pursuant thereto an agreement in writing was made on June 29, 1964 between the vendors and one Periasamy, as purchaser, whereby, in consideration of a deposit of $23,600 purportedly paid by him, the vendors agreed to sell the land for the total sum of $472,000 and transfer the same to him or his nominee, upon payment of the further sum of $248,400, leaving the balance of $200,000 to be secured by a mortgage of the property redeemable within 12 months. Periasamy subsequently assigned his rights under the agreement to Manickam and on November 6, 1964 the vendors, having agreed to reduce the sale price to $456,000 (by reason of approximately 3 acres being a graveyard and therefore unusable for building development), executed a deed of conveyance in favour of Manickam. He did not have to look for a purchaser.

On the very same day, November 6, 1964, he promptly addressed a letter to the chairman, board of directors of the housing society, as follows: -

"Lots: Nos: 114 Part 1 & 2 in the Mukim of 13 ... N.E.D.
SUNGEI DUA, Penang

I have a piece of land amounting to 59 acres in Sungei Dua, Penang. I understand your Society is interested in land in Penang and I wish to offer this land at a cost of $16,000 per acre.

I shall be thankful if you would let me know before the 20th November, 1964 and this option holds good from the date of this letter."

This letter, according to Tan Sri Abdul Jamil bin Abdul Rais (P.W. 10), was duly shown to him by the appellant and brought up for discussion at the 17th board meeting on November 27, 1964.

Meanwhile, on November 12, 1964 the appellant had taken upon himself — without prompting from any quarter — the initiative of writing a letter to the State Planning Officer, Penang, in these terms: -

"Lot No. 114, Pt. 1 & 2 Mukim N.E.D. 13
Sungei Dua — acres: 62.0258

The Federation of Malaya Government Officers' Co-operative Housing Society Ltd. has negotiated for the purchase of the above land and before the Board could take a final decision, I should be grateful if you could let me know whether the land concerned is suitable for development for housing for Government officers and your opinion about the locality.

2. An early reply in respect of this will be appreciated.

(Sd.) T. Mahesan
SECRETARY."

It will be observed that Manickam's letter had offered 59 acres for sale; yet the appellant clearly knew for a fact that the true acreage of Lot 114 Pt. 1 & 2 was 62 acres. He had, no doubt, travelled to Penang with Manickam to be shown over the land by Rengasamy in June — five months earlier — but then, according to his own account, he had done no more than get out of his car at Sungei Dua to look at the land from where he stood on the road, because what he saw left him far from satisfied. Indeed, he confided this unfavourable view to Manickam on their return journey that night to Kuala Lumpur — that was how matters stood when they parted company to meet no more, till the thread was picked up again by Manickam with his offer. It is highly pertinent, therefore, to ask: How did the appellant, in the face of Manickam's offer in explicit terms of 59 acres, come to know the true acreage of Lot 114 unless he had seen or was aware of the contents of one or both of the documents in which the exact area was set out, namely, the agreement of June 29, 1964 and the conveyance of November 6, 1964?

With reference to the appellant's letter (see Ex.P. 20) it may also be asked: Could he have represented that the Housing Society "has negotiated" (the underlining is ours) for the purchase of the land unless he

was stating a fact concerning action taken by himself towards acquiring the land — a fact of which he alone was aware? In other words, was it not an unwitting self-betrayal? The board's chairman (P.W. 10) had stated in evidence that there was "no board resolution to request the (appellant) to negotiate for the Penang land". A simple statement of fact by one having as good a command of the English language as the appellant's various literary efforts on the record clearly go to show, cannot, in our view, be regarded as a slip of the pen to be taken to mean other than what it says. "Will be negotiating", or other similar expression of a present intention, is a far cry from "has negotiated", or "is negotiating", which would be incorrect and untrue. Support for this view may be found in the minutes of the 17th board meeting held on November 27, 1964, which it was the appellant's duty as secretary to record (see By-law 20(4) of the Society's By-laws, Ex.P. 18D). These minutes spoke of Manickam's offer as ostensibly the first information received concerning this particular piece of land. This record of the proceedings was the appellant's own "report". Even if one were to read these minutes in no carping spirit, amazement is succeeded by incredulity when it is remembered that the appellant himself had gone to Penang not so long ago expressly to view this land in the company of the very person to whom he had confided that the housing society would not be interested in its purchase. Unless he had good cause to change his mind, should he not have spoken out? The transaction was going to involve a tremendous sum. Yet he made no mention of, nor was there any indirect allusion to, his having viewed the land himself in June 1964. Except for involuntary acts or the blind unquestioning performance of routine chores resembling automatism, there must be some sort of motive behind every act which involves making a decision. Therefore, in any endeavour to probe into the appellant's state of mind, such non-disclosure becomes highly relevant when examined together with the contemporaneous expression of opinion he conveyed to the board, as follows: -

"Continuing the secretary said that the position of land in Penang was such that during a discussion with the State Government some time last year, it had clearly stated that the State would not be in a position to assist in giving lands and the society if it wished to commence any scheme should think in terms of purchasing private lands, and this is considered to be very expensive in Penang. He further stated that since the principal approval was given by the Board to purchase land in Penang earlier, the Society was trying to get the land in Penang but was not successful. He said lands could only be obtained in 9th and 10th Mile, where there is no water and electricity supply. In short he said there was no choice."

In our view the non-disclosure was deliberate and the ulterior motive unmistakable.

At this board meeting on November 27, 1964 it was further minuted that the acting chairman, Enche G. Leo, "read the letter" from Manickam and the purchase was approved, subject to there being no adverse reports. When does surmise become suspicion and then crystallise into belief? It seems to us curious and wholly inexplicable that the offer should have been considered or discussed at all by a group of responsible officials on November 27, when it was explicitly stated that the offer was kept open only till November 20. The expiry date might have been remembered by the chairman (P.W. 10) who was shown the letter, but he was absent from the meeting. The only other officer on the board who definitely knew of the offer since November 12 was the appellant himself. If the expiry date was in fact extended, as it must have been, till November 27 and the offer was to be further kept open for an indefinite period till receipt of valuation reports from the architects, Norman Lehey and Goh Hock Guan, on whose initiative but the appellant's could Manickam possibly have been requested to grant the necessary extension? It is of course true that the appellant was authorised by the board to take appropriate action — but not before November 27. If it was the appellant's concluded view — as he informed the board — that "there was no choice", it was clearly his duty, as secretary, to write forthwith to Manickam and obtain confirmation in writing of the necessary extension to his offer. Such communication with Manickam was entirely above board. So why the concealment of a fact the truth of which could not possibly be denied? It is revealed by his letter of November 12 to the State Planning Officer, that he "has negotiated" for the purchase. The logic of facts is irrefutable. The board meeting was manifestly futile unless the offer had been extended beyond November 20. The letter of November 12 was equally futile unless the appellant by then had obtained the extension. Hence the conclusion is inescapable that the appellant and Manickam had so arranged it. The appellant's reason for the concealment is obvious.

On December 23, 1964 the board, at its 18th meeting, approved the purchase of "the 62 acres 0 rood 25 poles of land in Penang". It will be remembered that the offer by Manickam specified the area as 59 acres. Norman Lehey in his report likewise spoke of 59 acres, while Goh Hock Guan said nothing at all in his report regarding the size of the land. It is clear that none of the members of the board then knew or had any means of knowing that Lot 114 was exactly 62 acres 0 rood 25 poles as stated in the minutes. Only the appellant who wrote the minutes could have known the exact acreage. How did he know? After careful consideration of this point we are forced to the conclusion that it must have come from Manickam and by inspection of the deed of conveyance in Manickam's possession. It was nowhere in evidence that the appellant had inspected or caused to be inspected the conveyance deposited in the Penang Registry of Deeds. In default of such inspection the appellant's only source of information must have been Manickam. In either case, ascertainment of the area must at the same time have revealed the price paid by Manickam. It was $456,000 as disclosed in the conveyance.

All that has been stated up to this stage consists either of facts, proved by indisputable documentary evidence, or logical inferences which we believe are legitimately and properly drawn from the primary facts established. In our opinion the conclusion from such evidence, without anything more, was quite adequate to satisfy the learned trial judge beyond any reasonable doubt that the appellant knew of the price paid by Manickam.

The prosecution, however, went on to fortify their case in respect of *mens rea* by further evidence. They called as witnesses Periasamy (P.W. 7) and Rengasamy (P.W. 8). As to Periasamy he was, in the view of the trial judge, "Manickam's agent and partner in this joint venture". This view was substantiated by the letter dated December 24, 1964 which came to be written by the solicitors for Manickam who, by then, had decided to forestall Rengasamy's claim to the balance due. That letter contained an admission by Manickam that Periasamy was his agent in the transaction. Periasamy was undoubtedly acting as such agent when he lent his name to the sale agreement of June 29, 1964 as purchaser. In that capacity, therefore, it is natural that he should have been taken into their confidence regarding the secret pact which he alleged was made between Manickam and the appellant. He testified that the appellant was to take the lion's share, a half, of the profits. The appellant, he said, also contributed to the joint venture by paying in $30,000 towards the moneys required to make part prepayment of $45,000 to Rengasamy and the deposit of $23,600 required by the vendors upon the option being exercised on June 29, 1964.

The option, it will be remembered, was due to expire on June 30. Money had to be found urgently to the tune of $60,000 at least. On June 26 Manickam clearly had little to spare, only $100 in credit. He was, however, fortunate enough to be put in funds in the nick of time. On June 26 a sum of $30,000 was transferred from the account of one Madam Punithavathy in the Indian Overseas Bank at Kuala Lumpur to the credit of Manickam's account in the same bank. He was still short of some $30,000. On that very date who should have come to his aid but the appellant. He drew a cheque No. 629683 on the Chartered Bank to pay "cash or bearer" precisely the required sum of $30,000, which found its way immediately into Manickam's account in the Indian Overseas Bank. The Chartered Bank account belonged to the Federation of Malaya Government Services Welfare and Recreational Council of which the appellant held the post of Honorary Secretary. There was no indorsement on the cheque by whoever as holder or holders had paid it into Manickam's account, nor did the paying-in slip of the Indian Overseas Bank disclose the identity of his benefactor. It had every appearance of having been paid direct to Manickam. Tan Sri Jamil (P.W. 10) identified the cheque "as meant for Dr. Saw". It was not usual, he said, to issue cash cheques, but he was told by the appellant that Dr. Saw "wanted a cash cheque" towards part payment of the purchase price for the Rifle Range land. This land had been bought from Dr. Saw in 1962 and the agreement provided for payment within 6 months. What sum, if any, was still owing on June 26 was never disclosed and it is extraordinary, to say the least, why the funds of the Welfare and Recreational Council were paid out by a "cash or bearer" cheque to Dr. Saw and why the worthy doctor was at such pains to preserve the anonymity of both the payee of the cheque and its payer into Manickam's account.

The moneys so obtained by Manickam out of the two cheques were found to have been used to buy bank drafts for the purpose of paying the vendors' solicitors in Penang and in satisfaction of Rengasamy's claim on the option; the judge's finding to this effect based on documentary evidence was never challenged. Madam Punithavathy, it may be pointed out, is none other than the appellant's wife and Dr. Saw the appellant's family physician and fast friend, with whom he had been having highly confidential dealings in the way of business as director of several companies — notably, the United Asia Investments Limited and Southern Construction and Agencies. These companies were formed by Dr. Saw expressly to do business with the housing society. The significance of the appellant being the common link between the two payments of $30,000 made into Manickam's account, to enable him to exercise the option in time, was not lost on the trial judge and with respect we fully agree. Could the issue of both cheques on the same date, one by the appellant's wife and the other by the appellant himself to his good friend — but both going into Manickam's account that very day — have been a pure coincidence, or intended to serve the common purpose of Manickam and the appellant? In our view there could be but one answer, unless a satisfactory explanation was forthcoming.

The evidence marshalled thus far, in our opinion, not only established that the appellant knew of the purchase price which Manickam had to pay, but also that he managed to put Manickam in funds for exercising the option. By concealment of the price fetched by the same land only two months before, he had been largely instrumental in persuading the board that "there was no choice" but to accept Manickam's offer. For these services the prosecution produced incontrovertible evidence that on May 13, 1965 the sum of $82,000 had passed directly from Manickam's account in the Indian Overseas Bank into the personal account of the appellant in the same bank. It was effected in this manner. Manickam drew a cash cheque for $82,000. The bank paid out this huge sum in cash to the bearer whose indorsement appeared on the cheque. The indorsement was a signature "O. Sockalingam" followed by his "Identity card No. 2529421 dated 31.X.1961". On the same day $82,000 in cash was handed in by the same O. Sockalingam for payment into the credit of the appellant's account (see Ex.P. 36). Honest people the whole world over do the same thing with the greatest of ease, but differently.

On June 29, 1965 a transfer of $40,000 in cash from Manickam's account into the appellant's in the same bank was effected by means of the same buffoonery. Manickam issued a cash cheque. It was cashed the same day and bore again the indorsement of O. Sockalingam. On the same day $40,000 in cash was paid in to the credit of the appellant's account, as evidenced by the paying-in slip. The particulars therein were the same as in Ex.P. 36, except that the name of the payer was omitted. Periasamy had testified that O. Sockalingam was Manickam's agent in his moneylending business and bank matters. His evidence on this point stood unchallenged. The Assistant Registration Officer (P.W. 11) went on to prove that Identity Card No. 2529421 was issued on October 31, 1961 to K.L.K.R.O. Sockalingam Chettiar as shown in the indorsement on Ex.P. 35. In the light of such evidence

"and all the surrounding circumstances, including Manickam's close association with the (appellant)" the judge held it to be a reasonable inference that Manickam had deputed his agent to cash both cheques and pay the proceeds into the appellant's account. With this conclusion we are sure no sensible person can possibly disagree.

Periasamy had testified in detail how the appellant and Manickam came into the picture together. At their request he had inspected the land and given them his report. Another emissary was sent to view the land again or check on his report. Finally the appellant and Manickam went to Penang and were shown over the land by Rengasamy. The latter told the same story. When defence counsel made his submission at the close of the prosecution it was admitted that the appellant "did go to Penang" after all. Rengasamy testified that, after they had viewed that land and its price was negotiated, it was agreed that his own share of the profits was to be $1,500 per acre, of which he stipulated that $45,000 was to be paid over before the option was exercised; he was thereupon paid a deposit of $2,000 by Manickam and in due course the full sum of $45,000 was made up to him. Periasamy was not in Penang on this occasion but he had to be there when the agreement was entered into on June 29, 1964 by him as purchaser. Of this transaction he said "Manickam asked me to enter into the agreement. He wanted to buy the land in my name and sell it to the Government Society".

If these two witnesses concocted a false story, as alleged by the defence, it should not have been borne out, as it was, by the evidence in all material particulars. First, the visit to Penang by Manickam and the appellant was true. Why should they have to go together if the purchase by Manickam was not a joint venture, for the express purpose of reselling the land to the housing society? Secondly, Manickam clearly was not buying it on speculation. As proof see the letter of offer to the housing society made no sooner than the land was conveyed to him: "I understand your society is interested in land in Penang..." Thirdly, had he not been reasonably assured of extraordinary profits, would he have consented to pay as much as $45,000 for Rengasamy's option rights, even if the latter's word is doubted that Manickam had welshed on the balance of $43,500? Fourthly, the appellant was the direct source of the $60,000 made available to Manickam when it was sorely needed. What had the appellant's wife to do with Manickam that she should have instructed the bank by word of mouth to pay $30,000 into Manickam's account? (see Ex.P. 32 and the bank's request "Please send us your confirmation cheque"). Why the urgency? And how did she know Manickam had an account with the same bank? Fifthly, as regards payment of the gratification, how could Manickam have known, except from the appellant himself, that the latter had an account also in the Indian Overseas Bank? A Chettiar money-lender surely must have been skilled in the operation of a bank account. Could he not have instructed the bank to pay into the appellant's account, or draw a cheque, crossed "Account payee", in favour of the appellant? The direct method was no secret to Mrs. Mahesan. Why the pointless exercise of drawing out two large sums in cash and depositing the same amount, each time, in another account? The object of such manoeuvre is only too clear. In the event, it has been shown that any direct payment by one to the other was not admitted. It was of course their intention all along to defy proof of their conduct by every possible subterfuge. If they had nothing shady to conceal why transfer funds in this manner? An honest man opening his own safe does not have to use gloves or, should he use his naked hand, take precautions to wipe out his fingerprints!

In short, then, as the evidence unfolds on a step-by-step analysis, at the close of the prosecution, a *prima facie* case was established of the commission of offences in contravention of section 4(a) of the Act. Such *prima facie* case was demonstrably proved without resort either to the aid of the presumption under section 14 or the corroborative evidence of resources admissible under section 17.

We now turn to the grounds of appeal. Regarding the first ground, it has now been conceded by the learned deputy that the housing society was not a "public body" as he had maintained in the court below. As defined in section 2, "public body" includes —

"(c) any department, service or undertaking of the Government of the Federation or a State;".

In our opinion the service offered by the Malaysian Government Officers' Co-operative Housing Society Limited was not a service of the Federation or of any State Government. A criminal statute must be construed strictly and, with respect, we think the judge was in error in holding that, by reason of this construction he placed on "public [illegible]", the presumption under section 14 of the Act [illegible] into operation as was the contention of the learned deputy. In the present circumstances, however, we hold that this was not a fatal error. The contingency that section 14 might later be held not to apply was contemplated. As the learned trial judge said "Even without taking into account the presumption raised under section 14 of the Act, I am satisfied that the charges have been proved beyond all reasonable doubt". Having analysed the prosecution evidence, we are completely satisfied that no resort to the presumption was even remotely necessary to sustain the conviction.

As regards the second and third grounds of appeal — assuming that the witnesses Periasamy and Rengasamy were accomplices within the legal meaning of that word — we hold that their evidence was abundantly corroborated by independent evidence in material particulars and the judge was perfectly right in accepting them as witnesses of truth. In his grounds of judgment he was careful to show that he had warned himself of the danger of accepting accomplice evidence. No formula or particular form of words need be used when he so advised himself. We are satisfied that he paid proper heed to the warning — not just lip-service. He referred to instances of corroboration. This does not mean that other instances which he considered superfluous for specific mention had not been taken into his consideration. We have taken note of others which have been set out in the preceding pages of this judg-

ment and need no repetition. More than this, we are satisfied that, were the evidence of both Periasamy and Rengasamy rejected *in toto*, there was still more than ample evidence proving every essential ingredient of the offences under section 4(a). Speaking of Rengasamy, apart, we do not think he could be bracketed with Periasamy. Being the option-holder, he looked to Manickam, and Manickam only, to pay him the consideration agreed upon for making over the option. Manickam was the purchaser, so far as he was concerned. He was in no way concerned with how Manickam chose to make his own profits or whom Manickam dealt with on resale. In our view, therefore, Rengasamy was a witness not to be classified or regarded as an accomplice. In any event, after exhaustive examination of his testimony, we cannot see in what respects he had said anything relevant or material to this case which is demonstrably false.

As to the fourth ground of appeal, it was said that the judge erred in applying section 17 of the Act in the absence of direct evidence of gratification. Learned counsel for the appellant submitted that such evidence of pecuniary resources disproportionate to an accused person's known sources of income was only make-weight which —

"may be taken into consideration by the court as corroborating the testimony of any witness in such trial or inquiry that such accused person accepted or obtained or agreed to accept or attempted to obtain any gratification and as showing that such gratification was accepted or obtained or agreed to be accepted or attempted to be obtained corruptly as an inducement or reward."

It was argued that "any witness" in this section refers to the giver of the gratification, that is to say, Manickam, and since he was not produced, as a witness, to give direct evidence of gratification, section 17 was wrongly applied by the trial judge. To this criticism there are several answers. First, we must say, with all respect, that we do not agree with an interpretation restricting the scope of the section in the manner urged upon us. It is sufficient to say that, in our opinion, Periasamy, being the acknowledged agent of Manickam, may have his evidence corroborated under the section no less than his principal. Secondly, once it was proved that the appellant was secretly working hand-in-glove with Manickam for the sake of illegal gratification — and there was ample evidence on this score — we are of opinion that the bank officer's evidence of payment by Manickam to the appellant was *prima facie* evidence of gratification received, thereby admitting the type of corroboration falling within section 17. The learned trial judge stated his own view thus:-

"It is contended by counsel that the section is not applicable because Manickam is not a witness in this case and therefore there is nothing to corroborate. I cannot accept this proposition. An examination of the section discloses that it is not confined to the testimony of the bribe-giver. The section does not say that. It says that 'the fact that an accused person is in possession ... of pecuniary resources or property disproportionate to his known sources of income ... may be proved and may be taken into consideration by the court as corroborating the testimony of any witness in such trial'. In my opinion the section is sufficiently wide to include the testimony of a witness who had testified to a relevant fact requiring corroboration. It is an alleged fact which needs corroboration, not the man who deposes to such fact."

With respect we agree with such interpretation. Thirdly, inasmuch as we agree with learned counsel that evidence under section 17 is only make-weight, it follows that if any such evidence was admitted in error, it could be dismissed as of no account unless it was necessary to and did turn the scales against the defence. In this case, assuming that not an iota of evidence was given under section 17, we are satisfied that other evidence was overwhelming, so that, even if the section were wrongly applied, the error could not be fatal to the success of the prosecution.

As to the last and fifth ground, we are in respectful agreement with learned counsel that production of the police statement made by the appellant on October 5, 1967 under section 15(1) should not have been objected to by the prosecutor and his objection upheld. This too was an error, but nevertheless, not such an error as could possibly have prejudiced the defence in the least. At most it went only to show that his earlier statement was perfectly consistent with the statement he gave from the dock in his own defence. It could have added nothing to the evidence. It is impossible to imagine that anything said earlier to his own credit or advantage could have been omitted in the statement made from the dock. This technical error, in our opinion, does not upset the prosecution's apple-cart, any more than the error of interpretation regarding the application of section 14. The evidence establishing a *prima facie* case at the close of the prosecution was, as we said, overwhelming and we are entirely satisfied that, unless such case was rebutted by the defence, the only possible verdict was guilty.

What then was the defence? In a nutshell it was this. Mrs. Mahesan's personal account in the Indian Overseas Bank was actually Dr. Saw's and she merely did as she was told by him when she instructed the bank on June 26, 1964 to transfer the $30,000 into Manickam's account. The appellant's own account into which Manickam made the two payments of $82,000 and $40,000 was likewise Dr. Saw's. Both husband and wife merely lent their names to the doctor; accordingly these two payments in were not only credited to the appellant without his knowledge but also not for his own personal benefit.

Dr. Saw Hock Chuan gave evidence on oath. The learned trial judge described it as a tissue of lies, supporting his opinion by reasons which, on any common-sense view, cannot be assailed. In 1958, the doctor said, there was an attempt to kidnap him for ransom. Accordingly he thought it wiser to keep his monies in several banks so that the amount in each account would not be visibly large. "In my transactions wherever I could", he said, "I used nominees on my behalf". That was why he started to operate nominee accounts, first, in the name of Mrs. Mahesan about 1963 and, after her account was closed, in the name of the appellant. This was so tall a story that the judge dismissed it with contempt. He held that there could be no possible relationship between the kidnap attempt and the opening of a nominee account five years later, nor do banks publish accounts of their customers. We are amazed that such a puerile reason could have been voiced in open court by any adult who is *compos mentis*. Bank

accounts are secrets jealously guarded. All the more surprising is the fact that, after secrecy being assured by nominee accounts, it was still necessary to cloak all drawings from and payments into these accounts by every possible subterfuge.

The judge saw clearly through the smoke-screen. As he put it: "The fact is that, ever since the accused became an officer holding a key post in the society, he and Dr. Saw were working hand-in-glove for their own profit". The housing society was formed on July 13, 1963, with the appellant firmly entrenched as secretary. On 11th July 1963 he tabled a confidential report for the consideration of the board of directors. The following excerpts tell their own story:-

"17. The secretary of the council in consultation with members of the council and with advice from the co-operative department decided to enter an option with the owners through the United Asia Investments Ltd., as agents for the purchase of these lands. The agreed purchase price is between $15,000 per acre for the Ng Eng Hean Plantations Ltd. at Petaling Jaya, and $20,000 per acre at Bungsar Park.

.....

29. In this direction the council has been very fortunate in having received an offer of $30,000,000 by the United Asia Investments Ltd., a joint-venture company preparing to enter the building industry in the country.

.....

In conclusion it is recommended for consideration in view of the difficulties of acquiring suitable land, finance and the inability of the board to actually administer the programme that:—

(a) the lands enumerated in the memorandum be purchased;

(b) the offer of finance be accepted on terms and conditions to be agreed upon;

(c) United Asia Investments Ltd., be appointed agents and contractors to the board."

The loan offer of $30,000,000 by the United Asia Investments Ltd. was a myth. It never materialised. An attempt to float a foreign loan proved abortive and $10,000,000 had to be obtained from the treasury, secured by a charge of lands purchased.

It is of special significance that the nominee accounts did not make their first appearance close on the heels of the kidnapping attempt in 1958, but the need became felt only when United Asia Investments Ltd. became the housing society's agents and contractors. The chairman of the board of directors, of course, was none other than Dr. Saw, who admitted that the company's "main business' was the housing society's projects. It is interesting to note that United Asia's cheque No. P.242093 dated January 17, 1966 was drawn for cash to the tune of $100,000, the next cheque in the series, of even date, for $50,000 and a third cheque payable to "Southern Construction and Agencies or bearer" for $185,000 were all used to pay for remittances abroad by and to the credit of the appellant. Dr. Saw's name appeared nowhere in any of the documents produced as Ex.D. 86.

We think sufficient has been said of the close business, rather than personal, relations between the appellant and Dr. Saw. What is more to the point is that, when asked in cross-examination whether the appellant had ever given him any document as proof that the moneys allegedly belonging to himself were held in trust for him in the so-called nominee accounts, Dr. Saw's reply was:-

"I remember some documents which accused signed, which clearly state that the ownership of the money in his bank account is mine. He gave the documents to me. I have to look for them."

This acknowledgment in writing would have substantiated his bare word beyond dispute, once its authenticity was accepted by the court. The importance of this document to the defence cannot be exaggerated. Its value must have been apparent to the legal advisers of both the appellant and Dr. Saw. They had months to prepare for the trial. The conclusion must accordingly be that no such document was ever made and this story was another of the tissue of lies he unblushingly told the court.

On the part of the appellant, too, it is reasonable to expect that, had he put his career as a civil servant in jeopardy by having unlimited funds in his and his wife's personal bank accounts — for no other reason than to oblige Dr. Saw — he could not have failed to protect himself from suspicion of corruption and the risk of an inquiry by having some acknowledgment in writing from the doctor which he could produce, unmistakably dated and capable of proof, showing that he was a trustee of the moneys for the doctor. Yet of any such documentary evidence there was not a scrap. The appellant had risen from humble beginnings to be promoted to a position of authority in the Prime Minister's Department. Could he have been wholly ignorant of General Orders? It may be pointed out that he knew enough to apply for permission to own a house and land in Petaling Jaya under General Orders Cap. D. 8. We are accordingly of the opinion that the judge was fully justified in holding for the various reasons he gave that the story of the nominee accounts was a fiction.

Last but not least, the doctor should have been able to produce an account of his cash or loan transactions with Manickam, if his evidence was to be of any assistance to the appellant. On his own showing he was a money-lender. He had no scruples about breaking the law. "I know," he said, "it is an offence to lend money without a licence". He had none. However, even unlicensed money-lenders keep books of account. He was not giving interest-free loans to a professional money-lender like Manickam. Hence he must have kept some record of his transactions with Manickam. He claimed that the two cheques of $30,000 each paid into Manickam's account on June 26, 1964 was a loan to the Chettiar. Where was the book in which the loan was entered? Where was the I.O.U. or promissory-note? Did he lend moneys without any security whatever to a person liable at any time to vanish without trace, as actually happened in this very case? Unless the $60,000 was shown by some evidence, however meagre, to be a loan given by Dr. Saw to Manickam, the conclusion is inescapable that it was the appellant who made this cash contribution towards the joint venture. The *prima facie* case on this point was never rebutted or even shaken by the defence. Not even the shadow of a doubt was raised in the mind of the trial judge, or in ours, that the two sums were in truth received by the appellant as grati-

fication. Dr. Saw's evidence was totally disbelieved by the trial judge. His failure notwithstanding, Mrs. Mahesan was never called as a witness. No doubt it was fully realised that where Dr. Saw failed, she could not have given any useful evidence. We would repeat that the misdirection or errors, such as they were, with regard to the application of section 14, section 17 and section 15(1) of the Act have not lessened the measure of our satisfaction that no miscarriage of justice was occasioned thereby. This case is pre-eminently one for the application of the proviso to section 60(1) of the Courts of Judicature Act: see *R.* v. *Oster-Ritter*[1] applying the proviso to section 4(1) of the Criminal Appeal Act, 1907. We accordingly dismiss the appeal against conviction.

As to sentence, it is true that section 5 of the Act has no application. Section 4 therefore applies, under which the maximum penalty is 5 years' imprisonment, a fine of $10,000 or both. The judge had weighed carefully the sentence he should pass in this case and we cannot say that he was too severe in any way. True, the housing society was technically not a public body. But the fact cannot be over-looked that the appellant was a public servant, who, by reason of his high official position, was placed in a position of trust. He has caused loss of the savings of a considerable number of civil servants, who can ill afford it. We would quash the sentence under section 5 and in lieu thereof sentence the appellant to 5 years' imprisonment and a fine of $10,000 on the first charge and 5 years' imprisonment on the second charge, to run concurrently. In default of payment of the fine the appellant will undergo a further term of imprisonment of one year. We affirm the order for repayment of $122,000 to the housing society: if not paid within one month hereof execution to issue.

Appeal dismissed.

Solicitors: *Shearn, Delamore & Co.*

GERALD FERNANDEZ v. ATTORNEY-GENERAL, MALAYSIA

[F.C. (Azmi L.P., Suffian & Ali F.JJ.) February 13, 1970]

[Kuala Lumpur — Federal Court Civil Appeal No. X.97 of 1969]

Extradition — Commonwealth fugitive criminal — Application for extradition of person against whom offences under the Prevention of Corruption Ordinance, 1960 of Singapore were alleged — Whether the Ordinance applies to agent of a private company — Whether provisions of Commonwealth Fugitive Criminals (Amendment) Act, 1969 is void as it conflicts with art. 7 (1) of the Federal Constitution — Whether High Court has jurisdiction to answer question — Courts of Judicature Act, 1964 — Commonwealth Fugitive Criminals Act, 1967.

In this case the appellant had been arrested on an endorsed warrant alleging offences under the Prevention of Corruption Ordinance, 1960 of Singapore against him. An application was made to the High Court by originating summons for the determination of the following questions: (1) are the offences under the Prevention of Corruption Act, 1961, restricted to persons employed by or connected with any 'public body' as defined by section 2 of that Act in relation to the affairs of such 'public body'?; (2) whether the Prevention of Corruption Act, 1961, applies to the affairs of private companies, commercial concerns, etc., *inter se* and such affairs being unconnected with any 'public body' or agent or servant thereof?; (3) is a public limited company incorporated in a foreign country under the laws of such country with the Government of Malaysia as one of its major shareholders included in the definition of 'public body' in the Prevention of Corruption Act, 1961?; (4) is the Commonwealth Fugitive Criminals (Amendment) Act, 1969, retrospective in effect to allow the surrender of a fugitive criminal in respect of offences committed in Singapore before the date of its commencement, the application for surrender being made after the date of its commencement?; (4A) if the Honourable Court holds under (4) above that the Commonwealth Fugitive Criminals (Amendment) Act, 1969, to be retrospective would that Act be void for the reason that it is *ultra vires* the provisions of article 7(1) of the Constitution of Malaysia?; (5) is the Commonwealth Fugitive Criminals Act, 1967, limited only to applications for the surrender of a fugitive criminal to Singapore in respect of offences committed in Singapore after the date of its commencement?; (6) is the plaintiff a fugitive criminal within the meaning of Part III of the Commonwealth Fugitive Criminals Act, 1967?; (7) is an offence committed in the Republic of Singapore which corresponds to section 4(a) of the Prevention of Corruption Act, 1961 of Malaya an 'extradition offence' within the meaning of section 2 of the Commonwealth Fugitive Criminals Act, 1967? The Chief Justice who heard the application dismissed it. The appellant appealed to the Federal Court.

Held, dismissing the appeal: (1) it was clear from the description of "agent" in the Singapore Ordinance that the Ordinance applied to agents of a corporation;

(2) the Commonwealth Fugitive Criminals Act is procedural and merely provides machinery whereby persons accused of having committed offences under the laws of Singapore might be arrested in Malaysia and handed over to the Singapore authorities;

(3) as at the time of the alleged offences, the Prevention of Corruption Ordinance, 1960 was already in existence in Singapore, there is no question of the Commonwealth Fugitive Criminals (Amendment) Act, 1969 making the alleged acts crimes which were not crimes when they were alleged to be committed in 1966 and 1968;

(4) as far as fugitive criminals from Singapore are concerned it is only necessary to accuse them of an offence against the laws of Singapore (provided that it is a seizable offence or an offence punishable with imprisonment for 6 months or more under the laws of Singapore) irrespective of whether or not such an offence is also an offence against the laws of Malaysia;

(5) (*per* Ali F.J.) in the circumstances of this case the originating summons was not a *bona fide* attempt to seek a legal remedy from the court but solely for the purpose of circumventing the law and the originating summons should have been dismissed on the preliminary point.

Cases referred to:-

(1) *Thomas* v. *Attorney-General* [1937] Ch. 72.

(2) *Dyson* v. *Attorney-General* [1911] 1 K.B. 410.

FEDERAL COURT.

R. R. Sethu (*James Fernandez* with him) for the appellant.

Ajaib Singh (Senior Federal Counsel) for the respondent.

Azmi L.P.: I agree that the appeal on the merits should be dismissed for reasons given by my brother Suffian F.J. I wish to be associated with his remarks contained in the last paragraph of his judgment.

Suffian F.J.: We dismissed this appeal and I now give my reasons.

The appellant was arrested on 24th July, 1969, at Kuala Lumpur on an endorsed warrant issued by a